



STATE OF OREGON
Legislative Counsel Committee

April 3, 2017

To: Senator Brian Boquist, Chair
Senate Committee on Veterans and Emergency Preparedness

From: BeaLisa Sydlík, Senior Deputy Legislative Counsel

Subject: LC 4420—Family Law Proceedings Involving Deployed Parent

Enclosed please find LC 4420, drafted pursuant to the committee's request received on March 30, 2017. While LC 4420 has been drafted to contain a provision authorizing the courts of this state to award third party visitation with a child of a deployed parent to a stepparent, grandparent or family member of the child as requested, our office believes this provision would be held to be unconstitutional by the courts of this state under *Troxel v. Granville*, 530 U.S. 57 (2000) and its progeny. This provision would also not comply with Oregon's law for establishing custody or contact rights of third parties under ORS 109.119.

In *Troxel*, the United States Supreme Court determined that the liberty interests in the Fourteenth Amendment to the United States Constitution (the Due Process Clause) extended to parents with respect to the care, custody and control of their children.¹ The *Troxel* court held that a court's mere determination that visitation with third parties (grandparents) was in the best interests of a child under circumstances where the child's parent objected to such visitation was insufficient. Rather, there must be a determination that the child's parent was not a fit parent, stating that a fit parent is presumed to "act in the best interest of his or her child."²

Oregon codified the *Troxel* holding in ORS 109.119, which requires that a third party seeking custody or contact with a child whose parent declines to allow or restricts such access must make a requisite finding that the presumption that a parent acts in the best interest of a child is rebutted by clear and convincing evidence.³ Oregon courts have consistently and recently applied this requirement to cases involving third party contact with a child whose parent denies or limits access to a child of the parent.⁴

The language requested in LC 4420 runs afoul of the United States Constitution's Due Process Clause and ORS 109.119 in that it permits a court to grant temporary visitation with a child of a deployed parent to third parties regardless of the nondeployed parent's objections to such visitation, if any. See Section 1 (5) of LC 4420, amending ORS 107.145.

Encl.

¹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

² *Id.* at 60-61, 69.

³ ORS 109.119 (2)(a) and (b).

⁴ See *Kennison v. Dyke*, 280 Or. App. 121 (2016); *Husk v. Adelman*, 281 Or. App. 378 (2016).